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In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 223

RAILWAY EXPRESS AGENCY, INCORPORATED,
PETITIONER

v.

WILLIAM J. KENNEDY, FRANK C. SQUIRE AND HORACE W. HARPER, INDIVIDUALLY AND AS MEMBERS OF THE RAILROAD RETIREMENT BOARD OF THE UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE RESPONDENTS KENNEDY AND HARPER IN OPPOSITION

OPINIONS BELOW

The memorandum order of the United States District Court for the Northern District of Illinois, Eastern Division (R. 41) is reported at 95 F. Supp. 788. The opinion of the United States Court of

Appeals for the Seventh Circuit (R. 62-67) is reported at 189 F. 2d 801.

JURISDICTION

The judgment of the Court of Appeals was entered on June 5, 1951 (R. 68). The petition for a writ of certiorari was filed on August 3, 1951. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether Section 5 of the Railroad Unemployment Insurance Act precludes suit by an employer to enjoin the payment of unemployment benefits to its employees.

2. Whether petitioner, an employer admittedly subject to the Railroad Unemployment Insurance Act, lacks legal standing to maintain an action to enjoin the payment of unemployment benefits to its employees.

STATUTE INVOLVED

The pertinent provisions of Section 5 of the Railroad Unemployment Insurance Act (Act of June 25, 1938, 52 Stat. 1094, 1099, as amended by the Act of July 31, 1946, 60 Stat. 738, 45 U.S.C. 355) are set forth in the Appendix, *infra,* pp. 19-23.

STATEMENT

This is an action to restrain the respondents, individually and as members of the Railroad Retirement Board, from directing or permitting the payment of unemployment benefits out of the Rail-

road Unemployment Insurance Account to any of petitioner's employees represented by Locals 808 and 459 of the International Brotherhood of Teamsters for days of work lost as a result of an alleged unlawful strike commenced by those Locals against petitioner on September 23, 1950. The district court dismissed the complaint on respondents'[1] motion to dismiss; the court of appeals affirmed.

The facts alleged in the complaint are as follows: The strike involved employees of petitioner who were members of two Locals of the Teamsters' Union in the New York metropolitan area. On June 1, 1950, the unions requested certain changes in the existing contract between the unions and petitioner (R. 6, 12). Thereafter, for a period of several weeks, petitioner and representatives of the unions engaged in negotiations for a new agreement (R. 6). On September 21, 1950, after negotiations had failed, petitioner invoked the services of the National Mediation Board (R. 6, 29, 31). On the following day, September 22, the Mediation Board notified the parties that its services had been requested (R. 29, 32). On the next day, September 23, the employees went out on strike (R. 6, 29). On October 3, 1950, an Emergency Board was created by Executive Order to investigate the dispute and to report its findings to the President (R.

[1] The motion to dismiss was filed on behalf of two of the three members of the Railroad Retirement Board, Kennedy and Harper (R. 34-35).

6, 29, 33). As a result of conferences held by the Emergency Board with representatives of the unions and petitioner, the employees returned to work on October 12, 1950 (R. 6, 29-30).

Under the provisions of the Railroad Unemployment Insurance Act (45 U.S.C. 351 *et seq.*), benefits totalling about $90,000 were paid to some 2,600 of petitioner's employees for the first registration period of unemployment, ending on or about October 7, 1950 (R. 7, 37). On October 11, 1950, petitioner wrote the Railroad Retirement Board, protesting the allowance of unemployment benefits to its employees, and demanded that it be heard on the issue of whether the strike was illegal (R. 7, 13). On October 18, 1950, the Board advised petitioner that the issue of whether the strike was unlawfully commenced within the meaning of Section 4(a-2) (iii) of the Railroad Unemployment Insurance Act (45 U.S.C. 354(a-2)(iii)) had been properly adjudicated, and that petitioner had no standing to appear in such proceedings (R. 7-8, 15-16).

Petitioner then instituted this suit in the District Court for the Northern District of Illinois, Eastern Division, to enjoin the additional payment of $38,103.75 in unemployment benefits for the second registration period (R. 8, 37). The complaint alleged that petitioner has no adequate remedy at law in that there is no provision in the Railroad Unemployment Insurance Act, or any other act, whereby petitioner could appear before the Board

and be heard, or could effect an appeal to any competent court from a decision of the Board (R. 9).

A temporary restraining order was entered by the district court on October 23, 1950 (R. 19-20). Subsequently, upon petitioner's motion for an injunction and upon respondents' motion to dismiss the action, the district court revoked the temporary restraining order and denied the prayer for an injunction (R. 43). Holding that the action is an unconsented suit against the United States, that petitioner has no statutory right to contest the findings and decisions of the Board, that petitioner lacks standing to sue, and that petitioner's employees are indispensable parties who have not been joined, the district court dismissed the complaint without reaching the question of whether the strike had been unlawfully commenced (R. 42-43).[2] On appeal, the court below affirmed, holding that the Railroad Unemployment Insurance Act precludes judicial review in the instant case, and that petitioner, in any event, lacks standing to sue (R. 62-67).

ARGUMENT

The decisions of both courts below, holding that petitioner is not entitled to judicial review, are, we submit, clearly correct; there is no conflict, and no other ground for review by this Court.

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[2] A temporary injunction pending appeal, entered by the district court on the date it dismissed the complaint, is still in effect (R. 44, 69).

1. Petitioner concedes that the Act does not provide for judicial review at the instance of employers in cases such as the one at bar. It contends, however, that the Act does not evince clearly and convincingly the intent of Congress to withhold judicial review and, accordingly, that the Act should not be construed to deny appropriate equitable relief (Pet. 18-23).[3] We submit, to the contrary, that the Act, on its face, leaves no room for doubt.

Section 5(b) (45 U.S.C. 355(b)) authorizes the Board "to make findings of fact with respect to any claim for benefits and to make decisions as to the right of any claimant to benefits." Subsection (g) (45 U.S.C. 355(g)) provides that: "findings of fact and conclusions of law of the Board in the determination of any claim for benefits or refund, the determination of any other matter pursuant to subsection (c) of this section, and the determination of the Board that the unexpended funds in the account are available for the payment of any claim for benefits or refund under this Act shall be, except as provided in subsection (f) of this section, binding and conclusive for all purposes and upon all persons, including the Comptroller General and any other administrative or accounting officer, em-

[3] Petitioner does not here argue that Congress could not constitutionally preclude judicial review of the expenditure of the federal funds challenged herein. Cf. *Lynch* v. *United States*, 292 U.S. 571, 581-582, 587; *Butte, A. & P. Ry. Co.* v. *United States*, 290 U.S. 127, 142, 143; *Work* v. *Rives*, 267 U.S. 175, 181-182; *United States* v. *Babcock*, 250 U.S. 328, 331.

ployee, or agent of the United States, and shall not be subject to review in any manner other than that set forth in subsection (f) of this section."

Review under subsection (f) (45 U.S.C. 355(f)) is limited, by its terms, to review in the several courts of appeals of "a final decision under subsection (c) of this section." In turn, subsection (c) (45 U.S.C. 355(c)) provides for an appeal to the Board from initial determinations by employees or officers of the Board by (1) "any claimant who contends that under an initial determination of his claim he has been awarded benefits at less than the proper rate;" (2) "any claimant whose claim for benefits has been denied in an initial determination with respect thereto upon the basis of his not being a qualified employee;" (3) an employer "in any case in which benefits are awarded to a claimant in whole or in part upon the basis of pay earned in the service of a person or company found by the Board to be an employer as defined in this Act but which denies that it is such an employer," or "if contributions are assessed and payment is refused or payment is made and a refund claimed upon the basis that such person or company is or will not have been liable for such contributions;" and (4) by "each qualified employee whose claim for benefits has been denied in whole or in part upon an initial determination with respect thereto upon a basis other than one" above specified. (See Sec. 4, 45 U.S.C. 354). Subsection (c) further provides that "any issue determinable pursuant to this sub-

section and subsection (f) of this section shall not be determined in any manner other than pursuant to this subsection and subsection (f)."

The statutory scheme, accordingly, is as follows: An appeal may be had to the Board where an employee's claim for benefits is denied in whole or in part, or where the employer challenges the finding that the claimant is a qualified employee of an employer covered by the Act. No appeal to the Board is provided where a qualified employee's claim for benefits is allowed. Where an appeal is permitted by subsection (c), exclusive jurisdiction to review the Board's determination is conferred upon the several courts of appeals. But in those cases where no administrative review is provided for in subsection (c), such as the case at bar, the decision of the Board is made "binding and conclusive for all purposes and upon all persons" by subsection (g).

Petitioner's assertion that subsection (g) "relates only to matters determined pursuant to subsection (c), which relates wholly to review at the instance of employees and is concededly inapplicable to petitioner" (Pet. 19-20, fn. 8), conveniently ignores the fact that subsection (g) grants finality, except in so far as review is authorized in subsection (f), to three classes of determinations: (1) "the determination of any claim for benefits or refund," (2) "the determination of any other matter pursuant to subsection (c) of this section," and (3) "the determination of the Board that the

unexpended funds in the account are available for the payment of any claim for benefits or refund under this Act." Plainly, the conjunctive specification of three classes of determinations precludes the interpretation suggested by petitioner that subsection (g) relates only to determinations made under subsection (c). Petitioner's reading of subsection (g) is further belied by the express provision therein that the specified determinations shall be binding and conclusive upon the Comptroller General and any other administrative or accounting officer—an inappropriate provision if subsection (g) is inapplicable, as petitioner contends, to initial determinations which make awards of benefits.[4]

Finally, any possible doubt as to the intention of Congress is completely dispelled by the Administrative Procedure Act (Act of June 11, 1946, 60 Stat. 237, as amended, 5 U.S.C. 1001 *et seq.*). Section 2 (a) (1) of the Administrative Procedure Act (5 U.S.C. 1001 (a)) expressly exempts "agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them"—in which

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[4] Petitioner has apparently here abandoned the argument advanced below that subsection (g) is inapplicable to awards of benefits on the ground that, where a claim is granted upon an initial determination, there are no findings of fact or conclusions of law by the Board. Section 12(m) (45 U.S.C. 362(m)) expressly provides that "the Board is authorized to delegate to any member, officer, or employee of the Board any of the powers conferred upon the Board by this Act, excluding only the power to prescribe rules and regulations." See 20 C.F.R. (1949 ed.) 320.5; R. 36-37.

classification the Board admittedly falls (see 45 U.S.C. 228 j)—from all except the publicity requirements of Section 3 of that Act (5 U.S.C. 1002). See Sen. Doc. No. 248, 79th Cong., 2d sess., pp. 253, 307, 355; 92 Cong. Rec. 2152, 5649; Attorney General's Manual on the Administrative Procedure Act (1947), p. 11.[5] An obvious purpose of this provision was to leave judicial review of orders of agencies of this type within the precisely defined limits of the substantive statute. We submit, therefore, that the literal language of Section 5 of the Railroad Unemployment Insurance Act plainly manifests the intention of Congress to preclude judicial review in cases such as the one at bar (cf. *Switchmen's Union* v. *National Mediation Board,* 320 U.S. 297); when that language is read in conjunction with Section 2(a) (1) of the Administrative Procedure Act, there can be no reasonable doubt of that intention.[6]

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[5] Accordingly, the review provisions of Section 10 of the Administrative Procedure Act (5 U.S.C. 1009) relied upon by petitioner (Pet. 20) lend no support to petitioner. It is to be noted, moreover, that Section 10 of the Administrative Procedure Act is, by its own terms inapplicable to a case such as this wherein judicial review is precluded by statute.

[6] It is pertinent to observe that employers have been well aware that the Railroad Unemployment Insurance Act does not permit them to question the payment of benefits. See the statement of a representative of the Association of American Railroads in Hearings before a Subcommittee of the Committee on Interstate and Foreign Commerce, House of Representatives, 75th Cong., 3d sess., on H.R. 10127, p. 214, and in Hearings before the Committee on Interstate Commerce, United States Senate, 75th Cong., 3d sess., on S. 3772, p. 125, that "there is no appeal provided anywhere in the bill for the railroads which pay the freight." The absence of a right

2. Even assuming, however, that the Act does not preclude the judicial review sought herein, jurisdiction is absent because of petitioner's lack of standing to sue. Cf. *Gange Lumber Co.* v. *Rowley*, 326 U. S. 295. In the *Gange* case, *supra*, this Court held that an employer, whose future contributions to a state industrial insurance fund depended in part upon its own cost experience, had not made a sufficient showing of direct legal injury to entitle it to question the constitutionality of a statute extending the time in which an employee might file a claim for additional compensation. Petitioner seeks to distinguish the *Gange* case, *supra*, on the ground that it here challenges administrative action under the Act and not the constitutionality of the Act, but there is no suggestion in the Court's opinion in the *Gange* case, *supra*, that the considerations governing justiciability, therein applied to constitutional issues, are not equally applicable to non-constitutional issues. To

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to appeal a benefit payment determination was noted again in connection with the 1946 amendments of the Act by a representative of the Railway Labor Executives' Association (although only "annuities" were mentioned specifically, the discussion concerned judicial review provisions which the amendments were to make common to both the Railroad Retirement and Unemployment Insurance Acts—Section 11 of the Retirement Act, 45 U.S.C. 228k, incorporating the judicial review provisions of the Unemployment Insurance Act). See Hearings before the Committee on Interstate and Foreign Commerce, House of Representatives, 79th Cong., 1st sess., on H.R. 1362, p. 1091. And there is nothing in the 1948 amendments of the Railroad Unemployment Insurance Act (62 Stat. 576, 577-578), by which the employers were accorded reduced contribution rates, which indicates any intention to grant them a right to appeal a benefit payment determination.

the contrary, it is well-settled that one seeking to challenge administrative action must demonstrate that he has sustained or is immediately in danger of sustaining some direct injury to a private legal right.[7] Cf. *Perkins* v. *Lukens Steel Co.*, 310 U. S. 113, 125, 129; *Stark* v. *Wickard*, 321 U. S. 288, 304, 309. Indeed, less than two months after this Court's decision in the *Gange* case, it reiterated that principle in *Schenley Distillers Corp.* v. *United States*, 326 U. S. 432, 435. And, more recently, it stated that "administrative orders are not reviewable unless and until they impose an obligation, deny a right or fix some legal relationship as a consummation of the administrative process." *Chicago & S. Air Lines* v. *Waterman Corp.*, 333 U. S. 103, 112-113.

Clearly, the administrative action questioned herein does not fix petitioner's legal relationship, nor does it deny any legal right of petitioner. As in the *Gange* case, *supra*, petitioner herein has no vested right or interest in the Railroad Unemployment Insurance Account. The contributions to the Account paid by the carriers constitute a type of tax and are public monies held and administered

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[7] This requirement may be relaxed where Congress has specifically authorized judicial review at the behest of those adversely affected or aggrieved even though no legal injury was sustained. Cf. *FCC* v. *Sanders Brothers Radio Station*, 309 U.S. 470; *Scripps-Howard Radio* v. *FCC*, 316 U.S. 4; *FCC* v. *National Broadcasting Co. (KOA)*, 319 U.S. 239. This source of standing to sue, however, is not available to petitioner since, admittedly, Congress did not provide for judicial review by employers of awards of benefits (Pet. 18).

by the Government. See Section 8(h) of the Act, 45 U.S.C. 358(h); H.R. Rept. No. 2668, 75th Cong., 3d sess., p. 8; cf. *Steward Machine Co.* v. *Davis,* 301 U. S. 548; *Carmichael* v. *Southern Coal Co.,* 301 U. S. 495. Consequently, the payment of awards out of the Account in itself could not deprive petitioner of any right, and petitioner apparently does not contend otherwise.

Petitioner does contend, however, as did the employer in the *Gange* case, *supra,* that it has an interest in the integrity of the Account since the unlawful payment of unemployment benefits will affect the contribution rates which petitioner must pay (Pet. 14-15). In effect, therefore, petitioner urges that it has standing to sue because the challenged administrative action may impose further tax obligations upon it. But it has been held that a federal taxpayer has no standing to challenge the expenditure of federal funds even though such expenditure might possibly result in an increase in the taxes which he will eventually be compelled to pay. Cf. *Frothingham* v. *Mellon,* 262 U. S. 447; *Alabama Power Co.* v. *Ickes,* 302 U. S. 464, 478. Petitioner asserts that its status is more akin to that of a municipal taxpayer than a federal taxpayer, but analysis of the record reveals quite clearly that, as in *Frothingham* v. *Mellon, supra,* the effect herein of the challenged payment out of the fund upon future taxation is "so remote, fluctuating and uncertain, that no basis

is afforded for an appeal to the preventive powers of a court of equity." (*Id.* at 487).

To begin with, all common carriers covered by the Act are required to pay taxes at the same rate. Thus, unlike the statute involved in the *Gange* case, *supra,* the action here sought to be restrained could not affect the future rate payable by any particular employer but would affect the liability of all employers equally. Secondly, there is no basis for concluding that the general contribution rate would be directly or immediately affected by the payment of the benefits here in issue. The Act provides for the payment by the carriers of one-half of one percent of the compensation of each employee, not in excess of $300 per month, while the balance in the Railroad Unemployment Insurance Account is $450,000,000 or more. The rate payable increases by one-half of one percent when the Account falls below $450,000,000, and an additional one-half of one percent, up to a maximum of three per cent, for each $50,000,000 below that amount. (Sec. 8, 45 U.S.C. 358). As of September 30, 1950, the balance remaining in the Account was a little over $779,000,000 (R. 38), or $329,000,000 above the figure to which the balance would have to fall before employers would be required to pay at a higher rate. When this sum of $329,000,000 is compared with the benefits here involved—$38,000 (R. 37)—it is plain that there is no more than a bare possibility of injury in the future.

Moreover, it appears highly remote that any sub-

stantial changes in the balance in the Account will be produced by benefit payments such as those involved in this case. All unemployment benefits paid under the Act since operations commenced in 1939 and through September 30, 1950, amount to $311,622,000 (R. 40), a sum less than the amount by which the account exceeded $450,000,000 on September 30, 1950. Of this total, less than $2,000,000 has been paid to employees on strike (R. 40). In the past, the amount of unemployment benefits paid has varied from as low as $547,000 in the war year 1943-1944, to as high as $113,769,000 in 1949-1950. In the latter year, railroad traffic was affected drastically by the general business recession and by prolonged coal and steel strikes (R. 39). Accordingly, major changes in the balance have resulted, and will result, not from payments to employees on strike but from other factors such as fluctuations in business conditions which directly affect employment. It is entirely speculative, therefore, when the balance in the Account may reach the point at which the rate payable will increase. It has been estimated that, if the present annual payroll of the carriers covered by the Act is maintained and if benefit payments made continue at the amount which they have averaged for the past eleven years, the balance in the Account will remain above $450,000,000 until sometime after September 1962, but will be below that sum on September 30, 1963 (R. 39).

Finally, even assuming that the disputed payment of $38,000 was, in fact, illegal and would have a direct and immediate effect upon petitioner's contribution rate, petitioner could not show that it has suffered legal injury. Prior to 1948, the rate payable was fixed at three per cent and was not proportioned to the balance in the account (45 U.S.C. (1946 ed.) 358). Accordingly, the argument herein advanced by petitioner could scarcely have been raised under the Act, as originally enacted. See 83 Cong. Rec. 9071. And it is clear that the sliding scale of contributions initiated in 1948 (Act of June 23, 1948, 62 Stat. 576, 577-578) was not intended to result in a permanent minimum rate of one-half of one percent. The legislative history of the 1948 amendment demonstrates the understanding of Congress and the carriers that the minimum rate of one-half of one percent would not maintain the Account at an even level, that the purpose of the graduated tax was to give the carriers credit as to future taxes for the excessive taxes paid in the past until the Account had been reduced to a reasonable level, and that the tax rate would subsequently be stabilized at a percentage higher than the minimum of one-half of one percent. See Hearings before the Committee on Interstate and Foreign Commerce, House of Representatives, 80th Cong., 2d sess., on H.R. 6766, pp. 7, 10; H.R. Rept. No. 2154, 80th Cong., 2d sess.; S. Rept. No. 1574, 80th Cong., 2d sess.; Hearings before a Subcommittee of the Committee

on Labor and Public Welfare, United States Senate, 80th Cong., 2d sess., on S. 994, S. 2055, S. 2228, S. 2300, S. 2423, S. 2437, and S. 2438, pp. 79, 88-90, 114-117, 130-132; Hearings before the Committee on Ways and Means, House of Representatives, 80th Cong., 2d sess., on H.R. 5711, pp. 3-7, 8-10, 21-23, 29-32, 34-38; Hearings before a Subcommittee of the Committee on Labor and Public Welfare, United States Senate, 80th Cong., 1st sess., on S. 670, pp. 7, 44, 181.

Accordingly, here, as in the *Gange* case, *supra*, "the injury, as it appears from this record, is neither so certain nor so substantial as to justify a finding, upon that showing, that [petitioner's] substantial rights have been or will be invaded by allowance and payment of the award" (326 U. S. at 305).[8]

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[8] Petitioner's reliance on *Stark* v. *Wickard*, 321 U.S. 288, is, therefore, misplaced. In that case, the Court expressly found that the statute endowed producers with the right to be paid a minimum price (*Id.* at 304, 309). In the instant case, petitioner has no definite and direct interest in the insurance account. Similarly, the state cases cited by petitioner (Pet. 16) are inapposite. In all those cases, the state statute involved specifically includes the employer among those entitled to judicial review.

CONCLUSION

The decision below is correct, and there is no conflict. It is respectfully submitted, therefore, that the petition for a writ of certiorari should be denied.

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SEPTEMBER 1951.

APPENDIX

Section 5 of the Railroad Unemployment Insurance Act (Act of June 25, 1938, 52 Stat. 1094, 1099), as amended by the Act of October 10, 1940, 54 Stat. 1098 and by the Act of July 31, 1946, 60 Stat. 738, 45 U.S.C. 355) provides in pertinent part as follows:

* * * * *

(c) Each qualified employee whose claim for benefits has been denied in whole or in part upon an initial determination with respect thereto upon a basis other than one which is reviewable pursuant to one of the succeeding paragraphs of this subsection, shall be granted an opportunity for a fair hearing thereon before a referee or such other reviewing body as the Board may establish or assign thereto.

Any claimant whose claim for benefits has been denied in an initial determination with respect thereto upon the basis of his not being a qualified employee, and any claimant who contends that under an initial determination of his claim he has been awarded benefits at less than the proper rate, may appeal to the Board for the review of such determination. Thereupon the Board shall review the determination and for such review may designate one of its officers or employees to receive evidence and to report to the Board thereon together with recommendations. In any such case the Board or the person so designated shall, by publication or otherwise, notify all parties properly interested of their right to participate in the proceeding and, if a hearing is to be held, of the time and place of the hearing. At

the request of any party properly interested the Board shall provide for a hearing, and may provide for a hearing on its own motion. The Board shall prescribe regulations governing the appeals provided for in this paragraph and for decisions upon such appeal.

In any case in which benefits are awarded to a claimant in whole or in part upon the basis of pay earned in the service of a person or company found by the Board to be an employer as defined in this Act but which denies that it is such an employer, such benefits awarded on such basis shall be paid to such claimant subject to a right of recovery of such benefits. The Board shall thereupon designate one of its officers or employees to receive evidence and to report to the Board on whether such benefits should be repaid. The Board may also designate one of its officers or employees to receive evidence and report to the Board whether or not any person or company is entitled to a refund of contributions or should be required to pay contributions under this Act, regardless of whether or not any claims for benefits will have been filed upon the basis of service in the employ of such person or company, and shall follow such procedure if contributions are assessed and payment is refused or payment is made and a refund claimed upon the basis that such person or company is or will not have been liable for such contributions. In any such case the Board or the person so designated shall, by publication or otherwise, notify all parties properly interested of their right to participate

in the proceeding and, if a hearing is to be held, of the time and place of the hearing. At the request of any party properly interested the Board shall provide for a hearing, and may provide for a hearing on its own motion. The Board shall prescribe regulations governing the proceedings provided for in this paragraph and for decisions upon such proceedings.

Final decision of the Board in the cases provided for in the preceding two paragraphs shall be communicated to the claimant and to the other interested parties within fifteen days after it is made. Any properly interested party notified, as hereinabove provided, of his right to participate in the proceedings may obtain a review of any such decision by which he claims to be aggrieved or the determination of any issue therein in the manner provided in subsection (f) of this section with respect to the review of the Board's decisions upon claims for benefits and subject to all provisions of law applicable to the review of such decisions. Subject only to such review, the decision of the Board upon all issues determined in such decision shall be final and conclusive for all purposes and shall conclusively establish all rights and obligations, arising under this Act, of every party notified as hereinabove provided of his right to participate in the proceedings.

Any issue determinable pursuant to this subsection and subsection (f) of this section shall not be determined in any manner other

than pursuant to this subsection and subsection (f).

* * * * *

(f) Any claimant, or any railway labor organization organized in accordance with the provisions of the Railway Labor Act, of which claimant is a member, or any other party aggrieved by a final decision under subsection (c) of this section, may, only after all administrative remedies within the Board will have been availed of and exhausted, obtain a review of any final decision of the Board by filing a petition for review within ninety days after the mailing of notice of such decision to the claimant or other party, or within such further time as the Board may allow, in the United States circuit court of appeals for the circuit in which the claimant or other party resides or will have had his principal place of business or principal executive office, or in the United States Circuit Court of Appeals for the Seventh Circuit or in the Court of Appeals for the District of Columbia. * * * Upon such filing the court shall have exclusive jurisdiction of the proceeding and of the question determined therein, and shall give precedence in the adjudication thereof over all other civil cases not otherwise entitled by law to precedence. It shall have power to enter upon the pleadings and transcript of the record a decree affirming, modifying, or reversing the decision of the Board, with or without remanding the cause for rehearing. The findings of the Board as to the facts, if supported by

evidence and in the absence of fraud, shall be conclusive. No additional evidence shall be received by the court, but the court may order additional evidence to be taken before the Board, and the Board may, after hearing such additional evidence, modify its findings of fact and conclusions and file such additional or modified findings and conclusions with the court, and the Board shall file with the court a transcript of the additional record. The judgment and decree of the court shall be final, subject to review as in equity cases. * * *

(g) Findings of fact and conclusions of law of the Board in the determination of any claim for benefits or refund, the determination of any other matter pursuant to subsection (c) of this section, and the determination of the Board that the unexpended funds in the account are available for the payment of any claim for benefits or refund under this Act, shall be, except as provided in subsection (f) of this section, binding and conclusive for all purposes and upon all persons, including the Comptroller General and any other administrative or accounting officer, employee, or agent of the United States, and shall not be subject to review in any manner other than that set forth in subsection (f) of this section.

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